

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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| In the matter of the Application of |) | |
| Consumers Energy Company |) | |
| for the Reconciliation of Power Supply |) | |
| Cost Recovery Costs and Revenues for the |) | Case No. U-15415-R |
| Calendar Year 2008 and for Other Relief |) | |
| Relating to Pension and OPEB Costs. |) | |
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NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on February 4, 2010.

Exceptions, if any, must be filed with the Michigan Public Service Commission, P.O. Box 30221, 6545 Mercantile Way, Lansing, Michigan 48909, and served on all other parties of record on or before February 19, 2010, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before March 1, 2010. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing of exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for

Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

STATE OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission

James N. Rigas
Administrative Law Judge

February 4, 2010
Lansing, Michigan
dmp

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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PROPOSAL FOR DECISION

On March 31, 2008, Consumers Energy Company (Consumers Energy or the Company) filed with the Michigan Public Service Commission (Commission) its application together with supporting testimony and exhibits for the purpose of reconciling its 2008 Power Supply Cost Recovery (PSCR) revenues and expenses. Consumers Energy represents that it experienced a \$640,207 cumulative 2008 PSCR overrecovery including previous years' over- and underrecoveries together with statutory interest. Pursuant to the Commission's order in Case No. U-14347, the Company also included testimony and exhibits to reconcile the Pension Equalization Mechanism (PEM) and Other Post Employment Benefits Equalization Mechanism (OEM) in connection with the Company's PSCR reconciliation. The 2008 total PEM regulatory asset to be recovered from customers is \$6,532,981 together with interest in the amount of \$777,790. The 2008 total OEM regulatory liability is (\$1,500,967) together with interest in the amount of \$149,766.

Pursuant to due notice a prehearing conference was held in this matter on May 5, 2009. At that time Michigan Power Limited Partnership, Ada Cogeneration Limited Partnership, Cadillac Renewable Energy, LLC, Midland Cogeneration Venture Limited Partnership, the Michigan Attorney General (Attorney General) and the Residential Ratepayer Consortium (RRC) were recognized as Intervenors. The Commission Staff also entered its appearance and participated in the proceeding. A schedule was then established for the remainder of the proceeding.

The hearings continued on November 17, 2009. At that time the parties stipulated to bind in the prefiled testimony and exhibits and waive the appearance and cross-examination of many of the witnesses. Consumers Energy presented two of its witnesses for cross-examination. Briefs have been filed by Consumers Energy, Staff, the Attorney General and the RRC. Reply briefs have been filed by these same parties.

Consumers Energy presented the testimony of six witnesses. Ms. Laura M. Collins, a Senior Rate Analyst I in the Revenue section of the Rates Department presented the Company's proposed refund plan for amounts overrecovered from the residential and commercial and industrial customers for the 2008 PSCR year. The witness testified Consumers Energy has rolled-in the 2008 PSCR net overrecovery of \$2,351,173, including interest, into the calculation of the 2009 PSCR factors. Ms. Collins also addressed the proposed recovery plan for remaining 2004 and 2005 balances.

With regard to the recovery of the amounts of pension and Other Post-Employment Benefits (OPEB) expense above that set in rates in Case No. U-14347, Ms. Collins stated Consumers Energy is proposing to net the pension underrecovery

and OPEB overrecovery and collect the additional expense through the use of a one-time prospective distribution related surcharge and one-time prospective generation related surcharge. The prospective surcharges would be based on projected usage in a future month and would be shown as a surcharge on customers' bills. Exhibit A-2 provides an example of the surcharge plan.

Finally, the witness addressed the credit to the PSCR for revenues associated with Palisades that are collected in base tariffs. Exhibit A-3 shows the Palisades PSCR Credit Illustration.¹

Mr. Steven C. Foster, the Fuel Supply Administrator in the Fossil Fuel Supply Department, testified regarding the Company's 2008 actual cost of coal, oil and gas used for electric generation. The witness sponsored three exhibits. Exhibit A-4 summarizes the volume and cost of coal received during 2008. Exhibit A-5 shows a comparison by generating plant of the as-burned volume and cost of coal projected in the 2008 PSCR plan filing with actual as-burned volume and cost incurred during 2008. The as-burned volumes were 13.1% lower and the as-burned costs were 6.0% lower than those projected in the 2008 PSCR plan case. Exhibit A-6 shows the oil and gas projected and actual burned volumes and costs for electric generation during 2008. The witness indicated that the actual costs of oil and gas burned in total were less than projected because the actual overall level of generation for the oil and gas units was less than projected.²

Mr. Stanley Hunley, a Senior Accounting Analyst in the Electric Revenue and Fuel Reconciliation section of the General Accounting Department, provided the

¹ Ms. Collins' direct testimony can be found at 2 Tr 16-24.

² Mr. Foster's direct testimony can be found at 2 Tr 25-33.

methodology and calculation of Consumers Energy's 2008 PSCR clause over- or underrecovery amount. The witness also provided calculations of the Company's 2008 PEM and OEM. The witness sponsored a number of exhibits, among which were Exhibit A-7, which shows the PSCR Reconciliation Report for the twelve-month period ended December 31, 2008 for all classes of customers, and Exhibit A-11, which summarizes the principal amounts of the 2008 PSCR overrecovery, the 2004 PSCR overrecovery (See Exhibit A-9), and the 2005 PSCR underrecovery (See Exhibit A-10) plus the associated interest through December 31, 2008. The witness stated these exhibits show the net overrecovery would be \$2,351,173 excluding the 2004 and 2005 balances and \$639,045 for all balances through December 31, 2008. Mr. Hunley testified that he reduced 2008 PSCR revenues to reflect the fact that Consumers Energy did not collect the full PSCR factor from the Transitional Primary Rate (TPR)³ customers and to recover the discounts associated with the Company's Large Industrial Economic Development tariff (Rate E-1) customer.⁴

In his rebuttal testimony, Mr. Hunley revised his Exhibits A-7 and A-8 to reflect certain adjustments made in response to the testimony of Staff's witness. The witness testified that as a result of these adjustments the overrecovery balance changed from \$1,210,113 to \$1,211,233 and the interest owed to customers changed from \$1,141,060 to \$1,141,112.

With regard to the PEM, the witness sponsored Exhibit A-12 which shows the calculation of the PEM regulatory asset for the year 2008 and Exhibit A-13 which shows

³ The TPR tariff was terminated effective June 20, 2008 pursuant to the Commission's order in Case No. U-15245.

⁴ The reduction to PSCR revenues for the TPR discount is \$338,601 and for the Rate E-1 discount is \$3,033,463.

the calculation of interest on the PEM regulatory asset for the year 2008.

With regard to the OEM, Mr. Hunley stated Exhibit A-14 shows the calculation of the OEM regulatory asset for the year 2008 and Exhibit A-15 shows the calculation of interest on the OEM regulatory asset for the year 2008.⁵

Mr. David B. Kehoe, Director of Staff, Electric Generation, described the fossil, Ludington Pumped Storage, peaker, and hydro unit outages and explained NO_x allowance expense. The witness sponsored a number of exhibits, among which was Exhibit A-16, which lists all unit outages and trips. The witness testified The Event Summary shows 159 events on the fossil units, 152 on the Ludington units, 35 on Zeeland, 273 on the peaking units and 62 on the hydro units in 2008.

Mr. Kehoe testified that 8 outages were originally planned for 28 days or more in 2008. Exhibit A-19 shows the unit for each of these outages, the planned length in days; the actual length in days; and the event number from Exhibit A-16 for each outage. With regard to the outage of Karn 1, the witness testified the outage was planned to begin October 11, 2008 and last for 66 days. The outage was to include boiler repairs, Selective Catalytic Reduction (SCR) equipment and duct cleaning, and a boiler chemical cleaning. Mr. Kehoe stated that during June of 2008, Karn staff detected a significant increasing change in the vibration characteristics of the turbine rotor on the Karn unit 1A rotor, concluded that there was a significant rotor failure in progress, and elected to remove the unit from service. The witness testified:

The rotor was initially sent to MD&A of St. Louis, MO for analysis and repair. Initially MD&A and their subcontractor KEMA found no indication of rotor cracking, but had reasons to believe that the tests performed on the rotor were inconclusive. Consumers Energy elected to send the rotor to Alstom for high speed balancing. Alstom normally performs their own

⁵ Mr. Hunley's direct and rebuttal testimony can be found at 2 Tr 34-52.

inspection of rotors prior to high-speed balancing, but elected not to do so, given the extensive testing done at MD&A. During high-speed balancing, the rotor continued to show the unusual vibration signature that had been the cause for removing the unit from service. After several attempts at high-speed balancing, Alstom was able to observe a 21.5 inch long by 2 inch deep crack in the rotor. 2 Tr 62.

Mr. Kehoe stated further that replacement of the rotor section, subsequent machining, rebalancing, return and reinstallation was completed on February 16, 2009.

Mr. Kehoe also addressed the NO_x allowance expense. The Company projected the cost of NO_x allowances for 2008 to be \$2,712,089. The actual NO_x allowance expense for 2008 was \$1,647,875 as shown in Exhibit A-22.

Finally, Mr. Kehoe testified the actual urea expense for 2008 was \$932,149. This expense was lower than projected in the Company's 2008 PSCR Plan proceeding because the SCR equipment was taken off-line during the Karn 1 outage. The actual urea expense is included in Exhibit A-7.

In his rebuttal testimony, Mr. Kehoe provided additional details regarding the inspection, testing, identification and repair of the Karn 1 rotor and challenged the period of delay identified by the Attorney General's witness.

Mr. David F. Ronk, Jr., the Director for Electric Transactions and Resource Planning, addressed the Purchased Power Supply Costs incurred by the Company in 2008; the allocation of costs to the Renewable Resource Fund; the settlement of costs with the Midwest Independent Transmission System Operator; the sales made to third parties in 2008; the performance of the Resource Conservation Plan and other reduced dispatch arrangements; and non-jurisdictional adjustments associated with sales. The witness presented the basis for recovery of \$1,284,153,075 in net purchased and

interchanged power supply expense for 2008.⁶

Mr. Ronk's rebuttal testimony responded to the Attorney General's position regarding the Karn 1 outage delay; the issues raised by the RRC regarding the Interruptible Rate and changes in plant operations; and the Staff's non-jurisdictional adjustment issue.⁷

Consumers Energy's final witness was Mr. Hubert W. Miller III. Mr. Miller supported the determination of 2008 PSCR factor underrecoveries associated with discounts provided under the Rate E-1 and the TPR tariff. The witness sponsored Exhibits A-23 and A-24. Exhibit A-23 shows the method used to determine the 2008 Rate E-1 PSCR factor underrecovery. Exhibit A-24 presents the calculation of the 2008 TPR PSCR factor underrecovery after accounting for the variance in TPR discounts collected through base rates.

Mr. Miller's rebuttal testimony responded to the criticisms concerning the underrecovery of 2008 PSCR costs from the Rate E-1 and TPR discounts and changes in the Company's interruptible service option.⁸

Staff presented a single witness, Mr. Alan Y. Droz, the Auditor Manager of the Act 304 Reconciliation Section in the Regulated Energy Division. Mr. Droz was responsible for reconciling Consumers Energy's 2008 PSCR revenues and expenses. In support of his testimony, Mr. Droz sponsored Exhibits S-1, S-2 and S-3. Mr. Droz testified that Staff has derived a total 2008 overrecovery of \$11,676,236 consisting of a principal amount of \$10,115,465 and interest of \$1,560,771. This compares with Consumers Energy's proposed overrecovery of \$2,351,173. Staff begins its analysis

⁶ Mr. Ronk sponsored Exhibits A-25 through A-37 and Exhibit RRC-7.

⁷ Mr. Ronk's direct and rebuttal testimony and cross-examination can be found at 2 Tr 75-128.

⁸ Mr. Miller's direct and rebuttal testimony and cross-examination can be found at 2 Tr 128-155.

with the underrecovery amount it found in Case No. U-15001-R and proposes several adjustments. Staff disputes the Company's adjustments for the TPR and Rate E-1 discounts and reversed the non-jurisdictional adjustment. Staff also made a small adjustment to correct the Company's overstatement of EPI sales and associated costs. (See Exhibit S-1).

Mr. Droz stated Exhibit S-2 presents Staff's calculation of the balance at December 31, 2008 still owed Consumers Energy from commercial and industrial customers related to the 2005 PSCR underrecovery from the Commission order in Case No. U-14274-R as well as the surcharge needed to collect the balance. The witness indicated that the Staff's underrecovery balance of \$1,632,527 differs for the Company's balance of \$1,814,432 because Staff used its 2007 ending balance presented in Case No. U-15001-R.⁹

The RRC presented a single witness, Dr. Robert Loube, Vice President and one of the principal owners of Rolka Loube Saltzer Associates. The witness opposed Consumers Energy's treatment of the TPR and Rate E-1 underrecovery, analyzed the impact of the recent change in the interruptible tariff and its affect on customers in the PSCR reconciliation process and examined the difference between the Company's planned and actual unit output. Dr. Loube sponsored Exhibits RRC-1 through RRC-6.¹⁰

The Attorney General presented a single witness, Mr. Michael J. McGarry, Sr., President and Chief Executive Officer of Blue Ridge Consulting Services, Inc. The witness presented the Attorney General's position regarding the Karn 1 outage delay

⁹ Mr. Droz's direct testimony can be found at 2 Tr 155-165.

¹⁰ Dr. Loube's direct testimony can be found at 2 Tr 166-180.

and Consumers Energy's proposed recovery of the Rate E-1 discount.¹¹

POSITIONS OF THE PARTIES

Several issues have emerged from the parties' presentations. They are the recovery of the discounts associated with the TPR and Rate E-1; the delay in the Karn 1 outage; Staff's non-jurisdictional adjustment; and changes in plant operation. The parties' positions on these issues are summarized below.

Consumers Energy

Consumers Energy has determined 2008 PSCR revenues of \$1,700,606,124 as shown on Exhibit A-7. The Company has reduced PSCR revenues by \$338,601 to account for the TPR discount and an additional amount of approximately \$3 million to reflect the Rate E-1 discount. Staff and Intervenors disagree with these two adjustments.

Consumers Energy's witness, Mr. Miller, testified that the Commission approved a temporary Transitional Primary Rate tariff in Case No. U-14347 to mitigate the rate shock of special contract customers returning to standard rates. Consumers Energy represents the effect of the TPR discount on the annual PSCR factor was not addressed in Case No. U-14347. By offering the discount, Consumers Energy maintains, the Company was able to retain the special contract load while increasing their contribution towards fixed costs. Spreading fixed costs over more units, Consumers Energy argues, benefits all customers and thus it would be unfair to require the Company's shareholders to suffer from an underrecovery because of the TPR discount.

¹¹ Mr. McGarry's direct testimony can be found at 2 Tr 181-205.

With regard to the Rate E-1 tariff, Consumers Energy states the Commission approved Rate E-1 in Case No. U-14692, finding it reasonable and in the public interest. Consumers Energy represents the intent of this rate is to promote substantial long-term investment in the industrial infrastructure of Michigan. Under Rate E-1 the customer pays an all inclusive discounted rate of 4.2¢/kWh on new load for ten years. The Company has identified a 2008 PSQR underrecovery of approximately \$3 million due to the Rate E-1 discount, as shown in Exhibit A-23.

Consumers Energy takes the position it was in the best interest of all customers for the Commission to approve Rate E-1 to help encourage new investment in the state. To now disallow the recovery of these discounts would penalize Consumers Energy and its shareholders for having discounted tariffs that were approved by the Commission for the purpose of attracting and retaining significant business investments in the State. In addition, the Company notes 1982 PA 304 requires that all power supply costs be subject to reconciliation, including power supply costs incurred in providing service to Rate E-1 customers.

Consumers Energy states it supported the Rate E-1 and TPR tariffs based upon its understanding that the Company and its shareholders would not be financially harmed from the application of those discounts. The Company asks the Commission to approve recovery of these economic development discounts.

Consumers Energy proposes to continue an allocation of a portion of the Company's sales and purchases as non-jurisdictional and therefore not subject to the PSQR process allocation set in the Company's latest electric general rate case.¹² Consumers Energy states that in its 2008 PSQR plan it excluded 55 MW of capacity to

¹² See Exhibit A-7, line 21.

serve non-jurisdictional sales based on the Company's existing contracts with Edison Sault Electric Company and Alpena Power Company. Consumers Energy states further these transactions were treated as non-jurisdictional sales in the Company's current general rate case, Case No. U-15245. Consumers Energy states an agreement with Edison Sault Electric for the sale of 20 MW of capacity and associated energy has been terminated. Consumers Energy contends the termination of a non-jurisdictional contract made the output from the slice of system serving that contract available for sale to others on a non-jurisdictional basis. As a result of the termination the Company sold the energy to the MISO Energy Market and the capacity to Detroit Edison. Consumers Energy represents the non-jurisdictional sales/revenues previously associated with the Edison Sault contract were replaced with a like amount of non-jurisdictional sales/revenues.

The Company states it is not seeking to alter the cost of service approved by the Commission in the last rate case, but is seeking to continue to reflect the allocation of resources between jurisdictional and non-jurisdictional consistent with the last rate case. Consumers Energy maintains the only thing that has changed with respect to these transactions is that where these transactions previously were between the Company and another specific utility on a wholesale basis, these transactions are now between the Company and different entities on a wholesale basis. This treatment, the Company argues, would reflect the fact that the Commission has considered certain revenues and expenses non-jurisdictional since the Company's last rate case and preserves that allocation until the Commission's order in the Company's next rate case.

Consumers Energy has responded to the Attorney General's position that a

portion of the replacement power costs resulting from the outage at the Karn Unit 1 should be disallowed because the portion of the outage at issue resulted from negligence by the Company's contractors. Consumers Energy contends that despite claims of negligence, the Attorney General has not shown that any of the actions undertaken by the Company or its contractors concerning the circumstances of this outage were negligent. Consumers Energy maintains that the testimony of Mr. Kehoe established the Company was experiencing a vibration problem at Karn; this problem had the potential to be extremely serious; the contractor hired to inspect and fix the problem did not initially find the cause, but rather rendered an inconclusive opinion; the Company continued to analyze the problem and identify the cause; and the rotor was sent to another contractor who identified and fixed the problem.

Consumers Energy concludes that there has been no evidence or analysis that demonstrates the actions taken by the Company and its contractors in discovering and repairing the problem at Karn amounted to negligence. The fact of delay is not sufficient in and of itself to conclude there was negligence. Evidence of malfeasance, misfeasance, operator error or negligent decision making is required. Consumers Energy contends no such evidence has been presented.

With respect to replacement power costs, Consumers Energy states that even assuming that the outage had been completed 51 days earlier, the Karn Unit 1 outage would have continued throughout the remainder of 2008, the PSCR year subject to this reconciliation. Therefore, there would have been no additional incremental power costs to consider in any event.

Finally, Consumers Energy argues the Attorney General's calculation of

replacement power is overstated because it uses average fuel costs and not the more realistic Locational Marginal Price (LMP) that the Company actually incurs in the MISO Energy Market. Consumers Energy states the LMP provides a much more accurate estimate of power costs than does the fuel averaging method.

Consumers Energy has responded to the RRC request that the Company provide certain information in future PSCR reconciliations concerning plant operations. Consumers Energy states the testimony of its witness, Mr. Ronk, shows that the Company has operated its plants in conformance with the requirements of MISO. Consumers Energy contends that the fact that the actual operation of certain plants is different from the projection of the operation of those plants is not evidence of any unreasonable or imprudent management or operation by the Company. It is simply the result of the changing circumstances. Consumers Energy notes that almost all of the projected variables in the Company's PSCR plan year differed from actual operations. Consumers Energy maintains this is not sufficient to conclude that there is a potential for misfeasance. Consumers Energy asks that the Commission reject the RRC's request for additional future filings.

Staff

Staff determined a total overrecovery of \$11,676,236. Staff states it proposes three adjustments to the Company's presentation. First, Staff begins its analysis with its 2007 PSCR underrecovery amount (which includes interest through 2007) from Case No. U-15001-R. See Case No. U-15001-R, Exhibit S-1, line 59.

Next, Staff reverses Consumers Energy's adjustments for the TPR discount of \$338,601 and Rate E-1 discount of \$3,033,463, adding them back into revenue. Staff

observes that the Commission recently issued an order rejecting a policy that permits the recovery of discounts afforded to non-PSCR customers from PSCR customers. In Case No. U-15645 the Commission found the Rate E-1 discount should not be used to reduce PSCR revenues. Staff argues Consumers Energy has failed to justify imposing the cost of power for customers that take discounted rates and do not pay a PSCR factor as part of their rates on PSCR customers.

Finally, Staff has reversed Consumers Energy's non-jurisdictional adjustment. Staff states the Company is proposing to exclude from its PSCR calculation \$2.24 million of jurisdictional net revenues (revenues less associated costs) from sales of capacity and energy. Staff's witness, Mr. Droz, testified it is not appropriate to exclude these net revenues from the PSCR because the sales associated with these revenues and costs are jurisdictional PSCR sales, and as such, cannot be excluded from the PSCR calculation, nor can their associated revenues and costs.¹³

Staff takes the position MCL 460.6j requires that these revenues and costs be included. There is no exception to this requirement that would retroactively adjust the jurisdictional cost of service due to changes in non-jurisdictional sales. Staff continues and argues the PSCR mechanism already allocates costs jurisdictionally by applying the ratio of PSCR sales to total sales. Staff asserts therefore the Company's non-jurisdictional adjustment should be rejected.

Staff notes it made a small adjustment to correct the Company's overstatement of EPI sales by 1,313.664 kWh and the associated costs by \$53,275.

Staff concludes and states Exhibit S-2 presents its calculation of the December 31, 2008 balance owed to Consumers Energy from commercial and

¹³ 2 Tr 165.

industrial customers related to the 2005 PSCR underrecovery from the Commission order in Case No. U-14274-R as well as the surcharge needed to collect the balance. Staff states its underrecovery balance of \$1,632,527 differs from the Company's of \$1,814,432 (See Exhibit A-10) due to Staff's use of its 2007 ending balance presented on its Exhibit S-2, line 14, in Case No. U-15001-R.

The Attorney General

The Attorney General also opposes Consumers Energy's adjustment to PSCR revenues to recover the TPR and Rate E-1 discounts. Initially the Attorney General argues that including Consumers Energy's rate discount reductions to PSCR revenues is inconsistent with the requirement in MCL 460.6j(12) to reconcile all PSCR revenues with all PSCR expenses. The Attorney General contends the discount deductions are not PSCR revenues, nor are they PSCR expenses.

The Attorney General notes the Rate E-1 discount was calculated and included in Consumers Energy's base rates charged to other customers. The Attorney General states that no evidence has been presented to demonstrate that PSCR revenues related to Rate E-1 sales were added to reported PSCR revenues, which must, therefore, be adjusted to remove a Rate E-1 underrecovery. Since no Rate E-1 sales were included, the Attorney General maintains removing \$3,028,000 is a double-counted deduction.

In the alternative, the Attorney General argues the nuclear decommissioning surcharge, the ERIP surcharge, the regulatory assets surcharge, the security recovery factor, and the securitization bond and tax surcharges should be removed from the average rate calculated on Exhibit A-23. The Attorney General asserts those

surcharges cannot be legally and effectively treated as PSCR expense because the related costs are not PSCR expenses under MCL 460.6j(1)(a).

Finally, the Attorney General notes that although the Commission approved the discounts, it did not approve Consumers Energy's now requested rate shift in the rate case order. The Attorney General asserts that approval of discounts in a Commission order does not create a reasonable expectation that the Commission will shift costs associated with a discount to other customers. *See Consumers Power Co v PSC*, 226 Mich App 12, 27-30; 572 NW 2d 222 (1997)

The Attorney General takes the position that \$6,231,151 of replacement power costs should be disallowed because 51 days of the outage at the Karn Unit 1 resulted from negligence by the Company's contractor. The Attorney General states the record shows the turbine rotor was sent to MD&A to identify and repair the problem; MD&A failed to identify the problem; and the rotor had to be sent to another firm for the same work, identifying and repairing the problem. The Attorney General argues MD&A should have performed additional inspections, but failed to do so. The Attorney General concludes then that from the time the rotor left MD&A until the time the repair work actually commenced was a delay caused by MD&A's failure to identify the problem. The Attorney General contends that between ratepayers who had no control of the events and Consumers Energy who hired MD&A, the Company should pay the additional replacement power costs resulting from MD&A's negligence.

In response to Consumers Energy's argument that the outage continued beyond 2008, the Attorney General states the 51-day delay began August 12, 2008 and ended on October 2, 2008 when rotor repairs started and ended. (See Exhibit AG-1).

Although the total outage covered days in 2008 and 2009, the actual period when the 51-day delay occurred was in 2008, and therefore it is the proper subject matter of this reconciliation.

In response to Consumers Energy's criticism of the manner in which the disallowance was calculated, the Attorney General takes the position that an average price is a reasonable proxy in determining the cost of replacement power. The Attorney General asserts the average price is lower than the LMP in approximately half of the hours in a week and higher than the LMP in the other half, so no material injustice arises from reliance upon an average price in this situation.

The RRC

The RRC states MCL 460.6j(13)(a) provides:

In its order in a power supply cost reconciliation, the commission shall:

(a) Disallow cost increases resulting from changes in accounting or rate-making expense treatment not previously approved by the commission.

The RRC takes the position Consumers Energy's proposal to recover the costs associated with the Rate E-1 discount from PSCR customers has not been previously approved by the Commission. In addition, the RRC states recovering the TPR discount through the PSCR process would require all customers, including residential customers, to support the discount rate designed to help a small select group of customers. As with Rate E-1, the RRC represents Consumers Energy's proposed treatment of the TPR discount amounts to a cost increase to the PSCR customers caused by the TPR discount which has not been previously approved by the Commission. The RRC concludes that pursuant to MCL 460.6j(13)(a), the Commission should disallow the recovery of the Rate E-1 and TPR discounts in this PSCR Reconciliation.

The RRC notes that disallowing the recovery of the discounts increases PSCR revenue and as a result impacts the interest associated with the PSCR overrecovery. Exhibit RRC-3 shows the interest associated with elimination of the Rate E-1 and TPR discount recovery for 2008 is \$1,214,093.50.

The RRC states it attempted to analyze the change in Consumers Energy's actual use of the Zeeland 3 generating plant and the peaking units in 2008 compared to their planned usage reflected in the underlying PSCR Plan. The RRC states further that in its PSCR Reconciliation filing, the Company provided no explanation for the change in the Zeeland 3 plant operations. This, the RRC maintains, prevented verification of why the plant operations changed between what was presented in the underlying PSCR Plan and what actually occurred in 2008. The Company did not file evidence in rebuttal to explain why the changes are reasonable and prudent under the circumstances that existed in 2008.

The RRC takes the position the Commission should not be required to make a determination as to whether any aspect of a utility's application for a PSCR Reconciliation is reasonable and prudent when sufficient evidence has not been presented to support the utility's request. To remedy this situation, the RRC recommends that the Commission order Consumers Energy in future PSCR Reconciliation filings to present evidence that explains the reasons for changes in plant operations between what is shown in the PSCR Plan and the PSCR Reconciliation.

Finally, the RRC's witness, Dr. Loube, testified regarding the impact of the recent change in the interruptible tariff and its affect on residential customers and other non-interruptible PSCR customers in the PSCR Reconciliation process. The witness noted

the emergency purchase condition for interruption was deleted from the tariff effective December 1, 2008. As a result, Dr. Loube maintained interruptible customers will continue to receive a credit even though the probability of being interrupted has been reduced; all customers will be faced with higher bills through the PSCR reconciliation process; the Company has lost a significant management tool; and by not interrupting during times of high demand, prices in the Day Ahead Market may increase.

DISCUSSION AND FINDINGS

Consumers Energy proposes to reduce PSCR revenues by \$338,601 to account for the TPR discount and an additional amount of approximately \$3 million to reflect the Rate E-1 discount. Staff and Intervenors oppose these two adjustments to PSCR revenues. In support of its position the Company has argued that the Commission approved these tariffs because it was in the best interest of all customers to attract and retain significant business investments in the State. As such the Company contends it would be unfair to now penalize it and its shareholders by disallowing the recovery of these discounts.

The Administrative Law Judge agrees with Staff and Intervenors. The recovery of these discounts was addressed by the writer in Case No. U-15001-R and by the Commission in Cases Nos. U-14701-R and U-15645. In Case No. U-15645 the Commission spoke to the Rate E-1 discount specifically and determined it can not be used to reduce PSCR revenues.¹⁴ Furthermore, the RRC correctly observes the Commission has never made a determination that the costs associated with the Rate

¹⁴ This decision was reaffirmed in the Commission's January 25, 2010 Order in Case No. U-15645 addressing Consumers Energy's petition for rehearing. See pp. 5-6.

E-1 discount may be included in the calculation of the PSCR factor paid by the non-participating customers. They are not, therefore, the type of costs that may be recovered in this PSCR reconciliation pursuant to MCL 460.6j(13)(a). The Administrative Law Judge therefore recommends that the Commission reject Consumers Energy's proposed reduction to PSCR revenues to recover the discounts associated with the TPR and Rate E-1 tariffs.

Turning next to Consumers Energy's proposal to continue an allocation of a portion of the Company's sales and purchases as non-jurisdictional to reflect the non-jurisdictional allocation set in the Company's latest electric general rate case. Consumers Energy proposes to exclude from the PSCR calculation net revenues of \$2.24 million. The Administrative Law Judge finds that MCL 460.6j requires that these revenues and costs be included as the sales associated with these revenues and costs are jurisdictional PSCR sales, and as such, cannot be excluded from the PSCR calculation. The writer agrees with the Staff that the Company's proposal would convert the PSCR mechanism into a cost of service tracker that would retroactively adjust rates through the PSCR mechanism to emulate the last approved rate case jurisdictional allocations. The Commission has not approved such a mechanism. The Administrative Law Judge therefore recommends the Consumers Energy's non-jurisdictional adjustment to PSCR revenues be rejected.

The Attorney General has argued that a portion of the replacement power costs resulting from the outage at Consumers Energy's Karn Unit 1 should be disallowed because the outage was extended as a result of the negligence of the Company's contractors. Consumers Energy properly notes that MCL 6j(13)(c) places the financial

responsibility for net increased costs resulting from an outage on the utility unless the utility demonstrates that the outage, or any part of the outage, was not caused or prolonged by the utility's negligence or by unreasonable or imprudent management. Although the Attorney General alleges negligence by the utility and its contractor, no evidence has been presented to support a finding that any of the actions undertaken by the Company or its contractors concerning the circumstances of this outage were negligent. The record does show that the contractor hired to inspect and fix the problem did not initially determine the cause, but rather rendered an inconclusive opinion. The Company continued to analyze the problem and sent the rotor to another contractor who identified and fixed the problem. Consumers Energy's demonstration that it was diligent in pursuing a fix for the problem has not been successfully rebutted. The Administrative Law Judge agrees with the Company that the mere fact of delay is not sufficient to conclude that there was negligence. More is needed to establish that negligence as a matter of fact took place. The writer therefore recommends that the Commission reject the Attorney General's adjustment to disallow a portion of the incremental PSCR costs resulting from the Karn Unit 1 outage.

The RRC has argued that the Company's presentation regarding the operation of its plants fails to provide evidence that would allow verification of why plant operations changed between what was presented in the underlying PSCR Plan and what actually occurred in 2008. The RRC asks that the Commission order Consumers in future PSCR Reconciliation filings to file evidence that explains the reasons for changes in plant operations between what is shown in the PSCR Plan and the PSCR Reconciliation. Consumers Energy presented testimony which shows that the

Company has operated its plants in conformance with the requirements of MISO. The Administrative Law Judge agrees with Consumers Energy that the fact the actual operation of certain plants is different from the projected operation of those plants is not evidence of any unreasonable or imprudent management or operation. It is simply the result of the changing circumstances as almost all of the Company's projected variables in the PSCR plan year differ from actual operations. The writer finds this is, by itself, not sufficient evidence to conclude that there is a potential for malfeasance, misfeasance or imprudence. The Administrative Law Judge therefore recommends that the Commission reject the RRC's request to impose additional future filing requirements.

Finally, the RRC raised, through the testimony of its witness, concerns regarding the impact of the recent change in the interruptible tariff and its affect on residential customers and other non-interruptible PSCR customers in the PSCR Reconciliation process. Neither the RRC nor any other party addressed this matter in their Brief or Reply Brief. The Administrative Law Judge therefore makes no recommendation in this regard as the record has not been adequately developed to support a recommendation.

CONCLUSION

All contentions of the parties not specifically addressed and determined herein are rejected, the Administrative Law Judge having given full consideration to all evidence of record and arguments in arriving at the findings and conclusions set forth in this Proposal for Decision.

Based upon the foregoing discussion and findings, the Administrative Law Judge recommends that the Commission issue its order approving Consumers Energy's 2008

PSCR reconciliation and its calculation of the net 2008 PSCR overrecovery as modified by the recommendations set forth above; find that the Company's analysis and calculation of the 2008 PEM and OEM are consistent with the Commission's December 22, 2005 order in Case No. U-14347; and approve its calculation of the PEM and OEM reconciliations as well as the proposed recovery methodology.

STATE OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission

James N. Rigas
Administrative Law Judge

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